

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 27

KING SOOPERS, INC.,

Employer,

and

Case 27-RC-8222

UNITED FOOD AND COMMERCIAL WORKERS,  
LOCAL NO. 7, AFL-CIO,

Petitioner.

**DECISION AND ORDER**

On January 3, 2003 (all subsequent dates to be 2003), United Food and Commercial Workers, Local No. 7, AFL-CIO filed a petition under Section 9(c) of the National Labor Relations Act (the Act) seeking an election among a bargaining unit described as "All meat cutters, apprentices, wrappers, butcher block employees, and clean-up personnel, including the manager(s) and including part-time workers who work regularly one (1) day or more a week, employed by King Soopers at store no. 81 in Brighton, Colorado."

A hearing in this matter was initially held on January 14. Thereafter, a Decision and Direction of Election was issued on January 29, ordering an election in a unit of "all full-time and regular part-time meat department employees, including the meat department manager, employed by the Employer at Store No. 81 located in Brighton, Colorado." Following the issuance of the January 29 decision, it became apparent that, due to a misunderstanding of the terminology used by the Petitioner, the unit in which

that decision directed an election, meat department employees only, was not the bargaining unit sought by the Petitioner. As has now been clarified, seafood department employees are also known as butcher block employees. Thus, the Petitioner had sought a unit of both the meat department and the seafood department (butcher block) employees, and had indicated an unwillingness to proceed to an election in any other unit. On February 5, I issued an Order Granting Motion for Reconsideration/Motion to Reopen Record and Scheduling of Hearing, which revoked the January 29 decision and scheduled further hearing in this matter for February 19.

At the February 19 hearing, the parties articulated somewhat different positions than those argued in the previous hearing. The positions taken by the parties at the second hearing date can be summarized as follows: The Petitioner argued that the petitioned-for unit of meat department employees and seafood/butcher block employees is appropriate because (1) meatcutters in the meat department possess specialized skills that warrant their inclusion in a separate unit; (2) the seafood/butcher block employees' skills and job duties are fully integrated with the meatcutter employees; and (3) there is so much interaction between the meat department employees and seafood/butcher block department employees that it is not possible to separate these two departments. In the alternative, the Petitioner indicated its willingness to proceed to an election in a smaller unit consisting of only meatcutters and wrappers employed in the meat department. In contrast to its position taken on the first day of hearing that the appropriate unit should include the employees of the meat department, seafood/butcher block department, and deli department, the Employer argued at the February 19 hearing that the only appropriate unit is a wall-to-wall unit of all employees at Store 81. The

Employer's current proposed unit would exclude only pharmacists, guards and supervisors as defined in the Act.

For the reasons set forth below, I find that neither of the units sought by the Petitioner are appropriate and, in light of the Petitioner's refusal to proceed to an election in the all employee unit found appropriate, the petition must be dismissed.

Under Section 3(b) of the Act, I have been delegated by the Board its powers in connection with this case.

Upon the entire record in this case, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup>

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. Based upon the record, no question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the reasons set forth below.

---

<sup>1</sup> On brief, the Employer renewed its objection to the Hearing Officer's refusal to order production of documents subpoenaed by the Employer regarding the Union's organizing efforts in two previous cases in which elections were held pursuant to Stipulated Election Agreements. The Board is not bound by collective bargaining history resulting from elections held pursuant to Stipulated Election Agreements not determined by the Board. West Abrasive Co., 145 NLRB 1665 (1964). As the relevant issue in the case now under consideration is limited to whether either of the petitioned-for units is appropriate, I find that the hearing officer properly refused to order the production of the subpoenaed documents.

## **FACTS**

### General Store Description and Management

The Employer, King Soopers, Inc., operates approximately 85 retail grocery stores located throughout the State of Colorado.<sup>2</sup> Store 81 opened in April 2000 in Brighton, Colorado. Since the store opened, it has been under the direction of Store Manager Susan Zwisler-Rhodes. As store manager, Ms. Zwisler-Rhodes has primary responsibility for overseeing the day-to-day operation of Store 81. She handles personnel matters including hiring and discipline of all store employees, upholding the standards for customer service, and maintaining the Employer's desired level of quality in all aspects of the store's operation. Assistant Store Manager David Kasel oversees the store in Ms. Zwisler-Rhodes' absence and assists her in her duties. Each department, including the meat and seafood/butcher block departments at issue, has a manager. However, the parties stipulated that the meat department manager and seafood/butcher block department manager are not supervisors within the meaning of Section 2(11) of the Act.

### Bargaining History

The Petitioner represents at least some employees in 82 of the Employer's 85 stores in Colorado. In approximately 76 of these stores, the Petitioner represents meat,

---

<sup>2</sup> The parties stipulated as follows: King Soopers Inc., a division of Dillon Companies, Inc., a Kansas corporation, is engaged in the retail sale of groceries and related items throughout the State of Colorado. During the past calendar year, the Employer purchased goods and materials valued in excess of \$5,000 directly from suppliers located outside the State of Colorado; and during the same period of time, the Employer had gross volume of business valued in excess of \$500,000.

butcher block, and deli employees in a unit separate from other employees. This includes all of the stores in the largest bargaining unit, the Denver Metropolitan Area unit. In five stores north of Denver, the Petitioner represents employees in a unit consisting of only employees in the meat department and seafood/butcher block department. In one of those five stores, the deli department employees are included in a unit with employees from the remaining departments in the store. In the other four stores, the employees from other departments are unrepresented.

#### General Terms and Conditions of Employment at Store 81

There are two documents that generally establish the current terms and conditions of employment for employees at Store 81. All employees at Store 81 are covered by a document entitled "General Conditions of Employment for Union-Free Employees," which contains universal conditions of employment for employees of all stores not covered by a collective bargaining agreement. The Employer also maintains a "Personnel Policies and Special Procedures Manual" that applies to all employees in all stores. All employees at Store 81 have the same health and welfare benefits; retirement benefits; holidays; vacations; jury duty provisions; pay raise provisions; and, with the exception of courtesy clerks, the same premium pay provisions.

Employees all wear the same core uniform consisting of a white shirt or an Employer-provided polo shirt with black or khaki pants and a name badge. Depending on their department, employees may wear more specialized apparel. For example, employees wear hats or hairnets in departments, including the bakery, deli, seafood/butcher block, and meat departments, where food is prepared. Employees in certain departments, including meat, seafood/butcher block, deli, dairy and frozen

foods, may opt to wear a "meat coat" when they are working in cold storage areas of the store. There is also a special apron worn by the deli clerks for safety reasons when they work with the fryer. In addition, meatcutters, seafood/butcher block employees, and deli clerks may wear safety gloves when cutting or using a slicer. For safety reasons also, some night crew employees wear cut-proof gloves and back braces.

Within Store 81, employees share common restroom facilities and two common break areas, one outside and one upstairs in the store.

### Departments and Employees

The Employer's philosophy and practice with respect to newly opened stores not covered by a collective bargaining agreement is the cross-utilization of employees. Under this practice, employees are primarily assigned to one department, but are expected and sometimes scheduled to work as needed in other departments to provide flexibility and adequate customer service.<sup>3</sup> Store 81 uses such an approach. In Store 81, employees are classified into work groups for seniority and promotion purposes. The Retail Clerk/Meat group includes all employees working in the service departments. This includes nearly all employees in the store, with the exception of supervisors, pharmacists and administrative employees.

Within the Retail Clerk/Meat group at Store 81, employees are assigned to a primary department. Employee departmental classifications and primary duties may be summarized as follows:

---

<sup>3</sup> I additionally note that the record indicates that the different departments within the store are not separate profit centers. Thus, when employees cover or are temporarily assigned to work in different departments, this is not tracked for profit purposes. In addition, the employees providing such coverage are not paid a different rate when they perform work in a different department.

The service department has courtesy clerks, whose main functions are sacking groceries, clearing carts, cleaning, and general customer service. General grocery clerks run the service desk performing such tasks as selling money orders, paying phone bills, selling cigarettes, and renting videos. General grocery clerks also run the fuel center. Checkers are classified as all-purpose clerks and their main function is servicing customers at the registers. The head clerks oversee the front end of the store, coordinate breaks and lunches for employees working in that area, and maintain customer flow and the general appearance of the store. The service manager oversees the entire service department and scheduling for the department. She is also placed in charge of the store if the Store Manager and Assistant Manager are not present.

The grocery department has all-purpose night crew clerks and a day grocery crew who stock grocery products. The grocery manager has responsibility over both the night crew and the day grocery crew.

The produce department employs produce clerks whose main job function is stocking produce and making sure there is quality product available for purchase. They also break down loads in the cooler and trim product. The produce manager oversees all work in the produce department.

The floral department has a floral clerk, who ensures the appearance of the floral department and who serves customers, and a floral manager. The floral manager writes the department schedule and oversees the day-to-day operation of the floral department.

The general merchandise department clerks are classified as general grocery clerks, and they stock nonfood items such as health and beauty aids, batteries, candles,

aluminum foil, etc. In the pharmacy, the pharmacy techs wait on customers, input customer names and insurance information into the computer, and dispense prescriptions.

The bakery department has a baker, counter clerks, and cake decorators. These employees generally prepare the bakery products, maintain the bakery case, and assist customers. The bakery manager is responsible for scheduling, overseeing orders, and maintaining the general condition of the department and customer service.

The deli department has a chef, counter clerks, and a deli manager. The chef and clerks prepare deli food, wait on customers at the counter, and stock product. The deli manager oversees the department.

#### The Meat Department

Currently, the meat department has two meatcutters and a meat manager.<sup>4</sup> Louis Gonzalez is a journeyman cutter who has been employed by the Employer for many years. Ricco Ponce is a meatcutter who was hired into the meat department after working as a grocery clerk in the dairy department. The meat manager is Valerie Wallis. There are no meat wrappers at Store 81.

Meat coming into the store arrives from the King Soopers Meat Plant. The Employer's retail stores have not received carcass beef since 1996. Beef coming into the meat department arrives boxed after having been cut or ground at the meat plant. The store does no cutting of lamb or chickens, which arrive case-ready. Most of the pork cutting is done at the plant. Approximately 90-95% of the meat delivered to Store 81 from the plant is pre-packaged and case ready.

---

<sup>4</sup> At the time of the first hearing, there were four meat department employees, however by the second date, part-time meatcutter Mike Davis had transferred to another store.



The remainder of the meat delivered to the store is in the form of boxed primals or subprimals. Primals are large cuts of meat such as chucks, loins, short loins and sirloins. Usually all that is required to process them is opening the box and slicing the meat with a knife. A saw may occasionally be used to cut certain items, such as a t-bone, however the record does not indicate how frequently this may occur at the store level. Donna Hill, the meat merchandiser<sup>5</sup> for Store 81, testified that, according to a study she performed over the six weeks immediately prior to the second hearing date, approximately three to six hours per week in the Store 81 meat department are spent on cutting boxed primals and subprimals, mainly to fill the specialty meat case. In addition, the grinding log from Store 81 reveals that one grind per day is done for the specialty meat case. The daily grind takes 25-35 minutes, including clean up and sanitation. Store Manager Zwisler-Rhodes testified that there are approximately 60-90 minutes of total cutting done by a single employee in the meat department each day. The meat department shifts are from 7:00 a.m.-3:30 p.m. and 12:30 p.m.-9:00 p.m. five days a week, with extra third shifts on Wednesday and Saturday.

Nearly all of the cutting and grinding done at store level is for the specialty meat case. The quantity and type of items cut for the specialty meat case are fairly standard on a daily basis and are determined by suggestion from the meat merchandiser based on sales. The cutting is always done first thing in the morning by the opening meatcutter. It normally consists of grinding ground beef and cutting Angus beef. Most of the cutting is done with a knife, and the saw is not used on a daily basis. After cutting, grinding and clean up, the opening meatcutter waits on customers and stocks

---

<sup>5</sup> A merchandiser is specialist for a particular department who works out of the Employer's main office with a number of retail stores.

the meat department shelves and cases for the remainder of his or her shift. As the cutting is already done by the time they arrive, the second shift employees generally provide customer service and stock for their entire shift.

Aside from the opening cutting and grinding performed for the specialty meat case, very little cutting is performed during the remainder of the day. Such additional cutting occurs occasionally when a customer makes a special request for an item that is not in the case. In that situation, either a meatcutter or a seafood/butcher block employee cuts the meat for the customer. There is some discrepancy in the record relating to this point. Meatcutter Louis Gonzalez testified that seafood/butcher block employees do not assist in cutting. However, seafood/butcher block manager Pam Gustafson testified that she assists in cutting for the specialty case 2-3 times per week. Further, Store Manager Zwisler-Rhodes confirmed that seafood/butcher block clerks perform this cutting at times. In this regard, Zwisler-Rhodes testified that if a customer requests a special cut, a seafood/butcher block clerk working the specialty meat counter would be able to perform the cutting. According to Zwisler-Rhodes, some deli clerks, including Minnie Covarrubias, have also been trained in meat cutting when they have been scheduled to work in the meat department. In addition, while it is unclear how often this occurs, the meatcutters on occasion perform some supplemental cutting if the store has a shortage of certain sale items from the plant.

In performing their jobs, meatcutters use knives, a grinder, a meat saw, wrappers and scales. Meat department employees are the only group generally trained in operating the saw, which is infrequently used according to the record evidence. However, employees in other departments use similar or equally complex equipment.

For example, seafood/butcher block employees use knives, scales, wrappers, and a steamer. The deli, bakery and produce departments also use knives. Finally, the deli employees additionally use a slicer and scales, and bakery employees use a bread slicer and mixers.

The meat department has particular sanitation rules that employees in this department have been trained to follow. Other departments that prepare food, such as seafood/butcher block and deli, have similar sanitation rules for their equipment.

#### The Seafood/Butcher Block Department

There are currently two seafood clerks and a seafood/butcher block manager at Store 81. The record reveals that the seafood/butcher block department employees, including department manager Pam Gustafson, are responsible for maintaining both the seafood/butcher block and specialty meat case. The seafood/butcher block clerks also stock and maintain the seafood/butcher block department freezer section and self-service case, and wait on customers. Gustafson testified that she personally sets the specialty meat case five days a week and that the other seafood/butcher block clerks also perform this task. Gustafson testified that she also assists in performing cutting for the specialty case if the meatcutters fall behind. According to Gustafson, if the opening meatcutter was out unexpectedly, either of the seafood/butcher block clerks could perform the specialty meat cutting.

#### Physical Layout of Departments and Coolers

The various departments in Store 81, such as bakery, deli, seafood/butcher block, and meat are located along the back wall of the retail floor. The seafood/butcher block and meat counters are right next to each other with no physical barrier between

them. The other departments are separate out front, but are connected through back rooms and coolers. Most of the meat department cases serviced by meatcutters are located on the sales floor, and the meatcutters spend much of their time on the floor stocking the cases. There is a meat cutting room and a meat cooler behind the meat counter. The meat cooler also provides storage for refrigerated seafood items. However, there is a separate freezer for storage of frozen seafood and bakery items.

When loads of frozen product are delivered to the store, the trucks are unloaded by the grocery department. All of the frozen products are staged in a large walk-in freezer and then broken down into departments. When truckloads of refrigerated product come in, the products are placed in different coolers. Dairy products are placed in the dairy cooler, and meat, seafood, and deli products are put in the cooler adjacent to the meat cutting room.

### Training

All employees at Store 81 are trained in customer service. They are further trained on the job regarding tasks that are necessary in their departments. For example, employees in departments that prepare and serve food, including meat, seafood/butcher block and deli, are trained in food safety and sanitation. Store employees also receive on the job training through classes and "mirroring" or working with more experienced employees or a manager. For example, bakers and cake decorators take classes, if they do not have experience. Checkers receive approximately 16 hours of training. Other employees, such as those working the service desk, produce, bakery, deli, and night crew, receive three shifts or 24 hours of training.

As for the specific training of meatcutters, the parties stipulated that there is no longer a formal apprenticeship program. There appear to be different levels of training that the meat department employees have undergone. Journeyman meatcutter Louis Gonzalez testified that there are different classifications of meatcutters, including four apprentice levels and journeyman status. Gonzalez was already a journeyman prior to coming to work at Store 81 when it opened. Gonzalez testified that two meatcutters who transferred to the Store 81 meat department from other departments received on the job training to learn how to operate the meat saw and grinder and to make special cuts of meat.

Meat Merchandiser Donna Hill testified there are two basic training programs for the meat department, however, the evidence does not indicate that any of the employees at Store 81 have undergone these particular training programs. One is a 3-day program for wrappers, however no wrappers are employed by Store 81. There is also a 30-day meatcutter training program that consists of having a trainee work the same schedule and mirror a journeyman meatcutter or meat manager to learn the cuts of meat, grinding, and sanitizing procedures. While a meatcutter is undergoing training and learning to cut primals, the amount of case-ready product being brought into a particular store from the meat plant is reduced to provide increased training opportunity. Again, it does not appear that any of the Store 81 meatcutters have undergone this training. Rather than going through this or any other formalized training program, meatcutter Ricco Ponce, who had no cutting experience upon transferring to the meat department from dairy, received on the job training that included mirroring a journeyman meatcutter for ten shifts. Meatcutter Mike Davis, who has since transferred to another

store, appears to have undergone a similar program as Ponce. There is no record evidence to indicate what type of training meat department manager Valerie Wallis may have received at Store 81.

### Interchange

Due to the Employer's philosophy of employee cross-utilization, there is substantial employee interchange between departments, both by employees covering as needed during a shift and by employees being scheduled to work in another department. The Employer cross-utilizes approximately 40% of the employees in the store, and such cross-utilization occurs in all departments. With regard to the departments at issue, meat department employees wait on customers in the seafood/butcher block department and deli department and vice-versa. The record evidence is undisputed that this occurs on a daily basis. Specifically, meatcutter Louis Gonzalez testified that he regularly helps out in the deli when they are busy and that he typically waits on customers in the seafood/butcher block department 4-5 times during an 8-hour shift. The record evidence reflects that seafood/butcher block department employees Liz DiCroce and Dan Martinez also provide such coverage in the deli on a regular basis.

Additionally, employees are scheduled between departments to fill in during vacations and sick leave. In fact, the seafood/butcher block, meat, and deli managers regularly coordinate the writing of their schedules. The meat and seafood/butcher block managers write their schedules together, and the meat department uses a seafood/butcher block clerk weekly. They also coordinate with the deli manager on a regular basis to fill in shifts and cover vacations. The seafood/butcher block manager

schedules 37 butcher block hours per week, which for administrative purposes are shown as budgeted to the meat department.

The record readily illustrates the cross-scheduling of department employees. For example, meatcutter Mike Davis was recently scheduled to work as a cake decorator in the bakery in order to cover vacations. Additionally, seafood/butcher block clerk Minnie Covarrubias recently spent two weeks working in the floral department around Valentine's Day. During that time, Covarrubias also worked in seafood/butcher block as needed. Further, at the time of the first day of hearing in this matter, deli employee Judy Caldwell-Strong was covering the seafood/butcher block counter. The evidence shows that such coverage is common, particularly because the seafood/butcher block department has only three employees. In addition, meat and seafood/butcher block employees are scheduled to work in the deli on occasion. In that regard, two deli department schedules placed into the record covering portions of December 2002 reveal that meatcutter Mike Davis was scheduled for one 8-hour shift in the deli, seafood/butcher block clerk Liz DiCroce was scheduled for three shifts in the deli, and seafood/butcher block employee Dan Martinez was scheduled for one shift in the deli.

Aside from temporary scheduling and coverage, permanent transfers/promotions between departments also occur on a regular basis. Some examples of this include Ricco Ponce, who was "promoted"<sup>6</sup> to the meat department from grocery where he had been a checker and dairy clerk; Liz DiCroce who transferred from deli to seafood/butcher block; Mike Davis who transferred from seafood/butcher block to the meat department; and Judy Caldwell-Strong who was "promoted" from seafood/butcher

---

<sup>6</sup> "Promotion" only indicates that the employee transferred and received a job with higher pay or more hours.

block to deli. In addition, when jobs become available within the store, they are posted for a 72-hour period on the store bulletin board and open to all employees within the store, except for pharmacists. The positions are then awarded based on seniority and qualifications.

### Wages

It is undisputed that meatcutters are generally paid a slightly higher wage than employees in other departments. The journeyman meatcutter wage is \$17.35 per hour and the lower level cutters earn around \$13.00 per hour. The starting wage in the meat department is approximately \$9.50 per hour, which is the rate that former dairy department employee Ricco Ponce received when he transferred into the meat department. However, the record reveals that the wage rate of the meatcutters is due to a historical standard more than anything else. Labor Relations Director Steve DiCroce testified that the Employer has maintained the historical wage levels for meatcutters to retain uniformity in wage rates from store to store and to remain competitive within the industry. DiCroce further testified that the meatcutters are paid more due to their skill level, even though they seldom use those skills.

The seafood/butcher block manager earns \$17.35 per hour, and the range for clerks in that department is between \$6.00-\$17.00 per hour. The seafood/butcher block manager testified that most seafood/butcher block clerks currently earn around \$14.45 per hour.

As for other employees, the courtesy clerks make approximately \$7.00-7.35/hour, checkers \$9.00-15.50/hour; grocery clerks \$7.35-11.00/12.00/hour; all-purpose clerks, including night crew and produce clerks \$9.00-15.60/hour; head clerks



\$15.76/hour, floral clerks \$10.00-12.00/hour; bakery clerks \$8.00-13.00/hour; cake decorators \$10.00-13.00/hour; and deli clerks \$8.50-12.00/hour.

## **FINDINGS**

Initially, I note that it is well established that a single storewide unit in the retail store industry is presumptively appropriate, and that this presumption applies to the case at hand. Haag Drug Co., 169 NLRB 877 (1968).

### A. The Petitioned-for Meat and Seafood Unit

Historically, the Board has held that meat departments were presumptively appropriate units because "meatcutters exercised a broad range of skills marking them as craftspeople." Scolari's Warehouse, Markets, Inc., 319 NLRB 153 (1995). However, where meatcutters do not regularly exercise the full panoply of traditional meatcutter skills, this presumption is inapplicable. In Scolari's, the Board specifically held that meatcutters who work primarily with boxed primal and subprimal meat no longer warranted the presumption of appropriateness historically afforded to traditional meatcutter craftspeople. However the Board further determined that meatcutters, along with other meat department employees, could still constitute a separate appropriate unit as measured by the Board's traditional community of interest factors.

The Board affirmed the holding and analysis of Scolari's in Wal-Mart Stores, Inc., 328 NLRB 904 (1999). Specifically, Wal-Mart articulated the Scolari's community of interest test as follows. In determining whether meat department employees share a distinct community of interest, the Board examines the actual work performed by the meatcutters to determine whether the processing of boxed primal and subprimal meats involves "substantial meatcutting skills which are distinct from other supermarket

employees.” The Board additionally looks to other community-of-interest factors to determine if the meat department employees share a community of interest with each other distinct from other employees in the store, with no one factor considered determinative. Thus the standard for determining community of interest among meat department employees is measured by whether: (1) the substantial portion of the Employer's meat department business involves boxed meat; (2) the continued application of specialized meatcutting skills is necessary for the processing of the boxed meat; (3) the meatcutters are highly trained; (4) a substantial percentage of the unit is engaged in skilled meatcutting work; (5) the unit is separately supervised; (6) there is limited interchange and transfers between meat department employees and other store personnel; and (7) employees in the proposed meat department unit receive higher wages than other store employees. If these factors overall are affirmative, a separate unit is appropriate.

The record evidence developed at the February 19 hearing establishes that the meatcutters at Store 81 work only with boxed primal and subprimal meat, not with carcasses. Thus, there is no presumption that the meatcutters constitute an appropriate unit. Accordingly, it is necessary to examine the Scolari's community of interest factors, as they would apply to the petitioned-for unit of meat and seafood/butcher block employees. From this analysis, I find that the meatcutters do not share a distinct community of interest apart from the other employees of the store to warrant their inclusion in a separate unit appropriate.

### 1. Boxed meat

The record is clear that a substantial portion of Store 81's meat department business does not involve boxed meat requiring use of traditional meatcutter skills. Specifically, the evidence reflects that 90-95% of the meat received by Store 81 is case-ready and requires no cutting or wrapping.

### 2. Application of specialized skills

As discussed above, a very small percentage of meat received by Store 81 requires the utilization of traditional meatcutting skills. While at least Gonzalez and the meat manager appear to possess traditional meatcutting skills, the record reveals that those skills are exercised on a limited scale. The record from the second date of hearing confirms that on a daily basis, only the opening meatcutter typically performs any cutting and grinding. This cutting, which consists of using a knife to slice large boneless cuts into smaller cuts such as steaks or filets, takes only 60-90 minutes per day according to the highest estimate provided in testimony or only 3-6 hours per week according to a lower estimate. Other cutting is done only on a sporadic basis, pursuant to a customer's special request. It is undisputed on the record that the grinding takes approximately one half hour per day, including clean up time.

The meat department schedules two 8-hour shifts per day for five days a week with two extra shifts on Wednesday and Saturday for a total of approximately 96 hours per week. Given the approximately 96 hours in which the meat department is staffed, the 60-90 minutes per day or 3-6 hours of cutting per week and the half-hour of grinding per day performed by the meat department employees, is an insubstantial amount of time. The vast majority of the meatcutters' time is spent waiting on customers and

stocking cases, which are not traditional meatcutting skills. Accordingly, it cannot be reasonably argued that there is an exercise of substantial meatcutting skills by meat department employees on a regular basis.

### 3. Training

Not all meatcutters at Store 81 are highly trained. Meatcutter Louis Gonzalez was a journeyman prior to coming to Store 81 when it opened, and worked for this Employer in the Denver bargaining unit prior to that for an unknown period of time. While the record does not explicitly indicate, given the length of time he has been in the business, it is likely Gonzalez likely went through an apprenticeship program earlier in his career. It is also unclear from the record what type of training meat department manager Valerie Wallis received. The Store Manager's testimony indicates that Wallis came to the Employer from a game processing plant and first worked as a courtesy clerk at Store 81. She then became a meat wrapper and learned cutting as a wrapper and later as the assistant meat manager. Meatcutters Ricco Ponce and Mike Davis were trained on the job, but did not go through a formal training or apprenticeship program. While the record evidence did not reveal much specificity about the training they received, it is clear that this training was not the detailed mirroring program Meat Merchandiser Hill explained in her testimony. The record evidence merely indicates that upon transferring to the meat department, these two employees were trained on the job on how to operate the meat saw and the grinder and how to make the specialty cuts of meat. The Employer's witnesses testified that the cutting is now at a very basic level and that most persons could be trained in a short time to perform the cutting necessary at the store. Both Store Manager Zwisler-Rhodes and Meat Merchandiser Hill agreed

that two weeks or 10 shifts of on the job training are sufficient for a meatcutter to learn all the specialty cuts required. The Union presented no evidence to contradict these assertions. In fact, the Petitioner presented only the limited testimony of meatcutter Gonzalez in the entire two days of hearing, and he presented no evidence to indicate that all meatcutters at Store 81 are currently "highly trained."

#### 4. Percentage of unit engaged in skilled meatcutting work

There are currently three meat cutters at Store 81 and three seafood/butcher block employees. Thus, the Petitioner seeks an election in which only half of the proposed unit is arguably engaged in duties requiring use of traditional meatcutting skills. However, as discussed above, the meatcutters engage in very little (if any) skilled meatcutting work on a regular basis. The record reveals that much of the meatcutting performed involves mere slicing of larger cuts into smaller cuts for display in the specialty case and performing limited grinding. While all three meat department employees cut and grind meat for the specialty meat case, even the most generous estimate regarding the amount of time this takes is only 90 minutes per day for one meatcutter, out of a single eight hour shift including clean up. Accordingly, the amount of time meatcutters spend cutting and grinding per week is a small fraction of the hours worked. Thus, the vast majority of the meatcutters' time is spent merchandising product by filling cases and serving customers, not performing skilled meatcutting.

#### 5. Separate supervision

Given that the parties stipulated that the meat and seafood/butcher block department managers are not statutory supervisors, any argument that they are separately supervised is without merit. The employees at issue are supervised by the

Store Manager or in her absence by the Assistant Manager with department managers performing only nondiscretionary duties to assist.

#### 6. Limited interchange and transfers

The record discloses that there is substantial interchange and transfer taking place between the meat department, the seafood/butcher block department and other departments. Consistent with its employee cross-utilization policy, the Employer uses employees as needed in departments other than their primary department on a regular basis. This cross-utilization includes employees of the meat and seafood/butcher block departments. For example, the record demonstrates that on a regular, daily basis employees in meat, seafood/butcher block, and deli wait on customers in each other's departments during busy times, breaks and lunches. Aside from this coverage, employees from the meat and seafood/butcher block departments are scheduled to work in additional departments as necessary for coverage and vice versa.

The record further demonstrates that there are permanent transfers between the meat and seafood/butcher block departments and other departments. Accordingly, the record is clear that there is considerable interchange and transfer between the meat, seafood/butcher block, and other store departments.

#### 7. Higher wages

While meatcutters are paid slightly higher wages than other employees in the store, there are other employees on the high end of their wage scale earning similar wages. The record reveals that the current meatcutters make \$13.00-17.35 per hour, with a starting wage of around \$9.50 per hour. This is in contrast to wage scales ranging from \$7.00-15.76 per hour in other departments, and up to \$17.35 per hour as

department managers. The record discloses that the meat department manager earns \$17.50-17.80 per hour.

The seafood/butcher block department's wages are somewhat more closely aligned with the remainder of the store, but also appear to be slightly higher on average. Thus, the seafood/butcher block manager earns \$17.35 per hour and the record testimony indicates that most seafood/butcher block employees earn around \$14.45 per hour.

In summary, I find that the evidence does not support a finding that the petitioned-for unit of meat department employees and seafood/butcher block department employees constitute an appropriate bargaining unit.

#### B. Alternative Meat Department Unit

As previously discussed, on the second hearing date the Union indicated its willingness to proceed to an election in a smaller unit consisting of only meatcutters and wrappers. The record is clear that Store 81 employs no wrappers. While a unit of meat department employees was found appropriate as a result of the record from the January 14 hearing, based upon the further evidence developed at the February 19 hearing, it has become clear that such a unit is inappropriate for bargaining. Most importantly in that regard, the additional record evidence does not support a finding that the meatcutters at Store 81 exercise traditional meatcutting skills to any substantial degree. Moreover, as examined in detail above, an assessment of the seven Scolari's factors reveals that there is no distinct community of interest pertaining to meat department employees that would render a separate unit appropriate. In sum, (1) a substantial portion of the Employer's meat department business does not involve boxed meat, (2)

there is a lack of any significant application of specialized meatcutting skills necessary for processing the meat, (3) the meatcutters are not "highly trained," (4) although all employees now employed in the meat department at times are arguably engaged in skilled meatcutting work, the time spent engaging in such work by any one meatcutter or by the department as a whole is insubstantial, (5) the meat department is not separately supervised, (6) there is substantial interchange and transfer between meat department employees and other store personnel, and (7) while the meatcutters' wages are slightly higher on average than other store employees, this factor is not determinative. Given this demonstrated lack of a separate community of interest, I find that a unit limited to meat department only is also not an appropriate unit. Thus, it appears that the only appropriate unit would be a storewide unit.

### **ORDER**

Inasmuch as I have found that the only two units in which the Petitioner has indicated a willingness to proceed to an election are not appropriate for the purposes of collective bargaining, I shall dismiss the petition.<sup>7</sup>

---

<sup>7</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street. NW, Washington, DC 20570. In order to be timely filed, a request for review must be received by the Board in Washington by April 17, 2003.



Dated at Denver, Colorado this 3<sup>rd</sup> day of April 2003.

---

B. Allan Benson  
Regional Director, Region 27  
National Labor Relations Board  
Dominion Plaza,  
600 Seventeenth Street, North Tower  
Denver, CO 80202-5433

440 1760 9167 4800

440 1760 9167 4867